



Appeal Decision

Hearing held on 16 August 2016

Site visit made on 16 August 2016

by Paul Singleton BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 September 2016

Appeal Ref: APP/M4320/W/16/3145700

Powderworks Lane, Melling, Merseyside L31 1AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by GCG Developments against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2015/00391, dated 6 March 2015, was refused by notice dated 2 September 2015.
 - The development proposed is demolition of existing factory buildings and erection of 11 dwellings together with revised access from Powderworks Lane, associated hard and soft landscaping, and traffic calming measures along Powderworks Lane.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was initially listed to be dealt with by way of written representations but the procedure was amended to allow for the evidence on the main issues to be tested.
 3. The Council has confirmed that the additional bat survey report provides adequate reassurance in respect of potential harm to ecological interests and that the concerns underpinning the second reason for refusal have been resolved.
 4. The application was submitted in outline with all matters other than details of access reserved. It was agreed that the details for approval at this stage should include the alterations to the existing site access up to the end of the 'no dig' section, with details to the estate road beyond this point being considered as part of the layout reserved matters. As Powderworks Lane is a private road the proposed highway improvement and traffic calming measures would also need to be approved at this stage, subject to a condition requiring the submission and approval of the technical/ construction details of these works. I have considered the appeal on this basis.
 5. Subsequent to the refusal of planning permission the appellant commissioned a Stage 1 Safety Audit of the proposed highway improvements and traffic calming works to Powderworks Lane and submitted an amended version of the plan detailing those proposed works. Notwithstanding that the appellant
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company has carried out its own consultation on that new information the Council objects to its submission as representing significant changes to the appeal scheme and argues that the appeal should be determined on the basis of the plans and proposals that were in front of the Council at the time of its decision. I have considered the submissions made by the parties and my findings on this issue are set out as part of my consideration of the effect of the proposal on highway safety.

6. The revised Sefton Local Plan (2012-2030) (Local Plan) has passed through its examination with a consultation on proposed modifications having recently been completed; the final report of the Examining Inspector is expected in September 2016 and adoption is programmed for early 2017. In light of its advanced stage of preparation the Local Plan policies should be given significant weight.

Main Issues

7. With Reason 2 having been resolved the main issues in the appeal are:
 - (a) Whether the proposal would be inappropriate development in the Green Belt and the effect on the openness and purposes of the Green Belt.
 - (b) The effect on the safety of highway users.
 - (c) If inappropriate development, whether there are other considerations which would clearly outweigh the harm by reason of inappropriateness, and any other harm, such as to constitute the very special circumstances required to justify a grant of planning permission.

Reasons

Green Belt

8. Saved Policy GBC2 of the Sefton Unitary Development Plan (2006) (UDP) relates to development in the Green Belt. The UDP predates the publication of the National Planning Policy Framework (Framework) and paragraph 215 of the Framework advises that due weight should be given to such policies according to their degree of consistency with the Framework. Part 1(d) of GBC2 deals with redevelopment but only in respect of 'major developed sites'. Its wording is more restrictive than the provisions in the sixth bullet of the Framework's paragraph 89 and, to that extent, Policy GBC2 is inconsistent with the Framework. I consider that greater weight should be afforded to paragraph 89.
9. Policy MN7 of the emerging Local Plan states that the construction of new buildings in the Green Belt is generally inappropriate subject to the exceptions set out in national policy. It is consistent with the Framework and defers to paragraph 89 in respect of what forms of development are excluded from the general presumption against inappropriate development. Paragraph 89 provides that the partial or complete redevelopment of previously developed sites is not inappropriate provided that it would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development on the land.
10. On the basis of the indicative site layout and floor plans the proposal would result in a net increase in built volume on the site of about 250 cubic metres. Its outline nature provides for the possibility of a lower volume of development being brought forward at reserved matters stage, for example by omitting

some of the garages indicated on the illustrative layout. Although a volumetric comparison can be helpful in assessing the effect of the proposal on the spatial dimension of openness other considerations, such as the proposed height of the buildings and the spread of development across the site, also need to be taken into account.

11. Only about half of the 160 metre (m) length of the appeal site is currently occupied by buildings and, when seen from within the site or from Butchers Lane to the north, these read as part of the larger group of industrial/commercial buildings at the western end of Powderworks Lane. They occupy a large proportion of the eastern half of the site but the remainder is free of buildings and permanent structures and is used mainly for vehicle parking and storage. On my site visit I saw a number of partially dismantled cars which may have been there for some time but most of the vehicles appeared to be parked rather than being stored on the land. I also saw four or five steel containers on the site.
12. I accept that the parking and storage of vehicles and containers reduces the openness of this part of the site to some extent. However, these are of much smaller scale and height than the buildings and are more widely dispersed across the site. I was also advised that the nature of this use is transient or frequently changing in terms of the numbers and types of vehicles present at any one time; hence these are not permanent features in the landscape. Their effect on openness quite limited. That this part of the site is much more open than the eastern half is apparent from within the site itself and in views from Butchers Lane. That contrast is particularly marked when looking from Butchers Lane towards the south east, from where the land is seen in conjunction with the adjoining meadow area (edged blue on the site location plan) and the open fields beyond. The larger vehicles can be seen in those views but many of the parked and stored cars are hidden and the trees and dense vegetation along the southern boundary of the land are clearly visible.
13. The development of 11 houses as shown on the indicative site layout would introduce new built form into an area that is largely open at present. The 2.5 storey height of the proposed houses would be broadly equivalent to the maximum height of the existing building. However, that maximum height (of around 9.4m) relates only to a relatively narrow component in the middle section of the building with many other parts, including the 3 bays at the western end of the former factory, being much lower. As envisaged in the indicative plans the proposal would result in built structure of around 9.4m to ridge height being repeated across the full length of the site with relatively small gaps in between the proposed houses. Although the layout is indicative it is difficult to see how 11 houses of the size envisaged could be accommodated other than by spreading these out along one side of the access road. Although no details are available at this stage it is likely that the openness of the Green Belt would also be affected by the construction of garages and other outbuildings, garden walls and fences unless a condition was attached to remove all of the normal permitted development rights.
14. I therefore find that, although the overall volume of built development may be no greater than that of the existing buildings, the proposal would have a greater impact on the openness of the Green Belt. As the open part of the site is currently used as a yard area ancillary to the mixed use of the former factory, the proposal would not represent an encroachment into the open

countryside or result in a greater impact on any of the other purposes of including land in the Green Belt. However, its greater impact on openness means that the proposal would not fall within the scope of the exception in the sixth bullet of paragraph 89 and would accordingly be inappropriate development in the Green Belt.

15. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 requires that substantial weight is given to any harm to the Green Belt and advises that very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Highway safety

16. Powderworks Lane is unadopted and provides access to some 8 residential properties and around 16 businesses, 8 of which occupy parts of the appeal site. The Lane is subject to private access rights in line with the number of addresses that it serves but it is unclear whether public rights of way have been established through usage. The parties agree that the road should be treated as a private street in terms of the limitations that this status places on the Council's ability, as local highway authority, to carry out works and to enforce any road markings or signage that might be placed within the road.
17. Revision A of Drawing Number J3654 Figure 2 (Figure 2A) includes a significant number of changes to the proposed highway improvement and traffic calming measures. The appellant describes these changes as a 'tweaking' of the proposals to respond to the reasons for refusal but the revisions have also been informed by the Stage 1 Safety Audit. When taken together, the changes shown in Figure 2A represent a significant evolution of key elements of the appeal scheme since the application was refused in September 2015. As advised in the Procedural Guide the appeal process should not be used to evolve the scheme and it is important that what is considered by the Inspectorate is essentially what was considered by the local planning authority and on which interested people's views were sought¹.
18. The Council has been able to consider the revised proposals and comment on these. However, the proposals could affect all residents and businesses with properties fronting that section of Powderworks Lane or who use the road for access and many of those parties might reasonably be expected to be interested in seeing the detail of the proposals so that they can understand what effect the works may have on access to and the use of their properties. Having regard to the principles established in the Wheatcroft case² I consider that the nature and extent of the revisions are such as to give rise to the need, not just for those who made representations on the original application to be re-consulted, but also for all of those who might be affected by the proposed works to be consulted on the detail of these changes.
19. The appellant's agent has written to all of those consulted on the original application but I note that, although that correspondence quoted the appeal reference and site address, it did not set out the description of development in the letter heading. No plans were issued with the letter and anyone wishing to

¹ Paragraph M.2.1 Planning Inspectorate Procedural Guide – Planning Appeals England – March 2016

² Bernard Wheatcroft Ltd v SSE and others [JPL 1982 p37]

see the detail of the revised proposals had to request that these be sent by email or pay for a hard copy to be posted and the need to provide an email or postal address may possibly have discouraged some from requesting detailed information. I am also concerned that many of those who had not previously made representations to the application or who had not retained the Council's notification of the making of the appeal, sent out some 5 or so weeks earlier, may not have realised that this letter related to a scheme including substantial works to Powderworks Lane itself.

20. I do not doubt that the letter was a genuine attempt to consult or that no comments were received in response. However, because of these reservations, I am unable to conclude that my acceptance of the revised plan would not prejudice any persons with a legitimate interest in the proposed works or would not deprive such parties of the opportunity that should reasonably be afforded to them to consider and comment on these revised proposals. For these reasons I find that the appeal should properly be considered on the basis of the Figure 2 proposals that were in front of the Council at the time of its decision.
21. The Statement of Common Ground confirms that the trip generation figures used in the Transport Assessment are agreed. These figures show that the redevelopment of the existing industrial site to provide 11 dwellings would lead to a significant reduction in the numbers of two way traffic movements, from 34 to 7 in the AM peak and from 26 to 6 in the PM peak; there would also be a material decrease in the number of commercial/goods vehicles and in the proportion of such vehicles in the overall mix of traffic. In light of these figures I find that the overall level of vehicle to vehicle conflict on Powderworks Lane would be likely to decrease notwithstanding that there would still be a mix of commercial vehicles and cars.
22. The evidence that the level of pedestrian movements to and from the site would be largely unchanged also suggests that there would be no material increase in pedestrian to vehicle conflict. However, Paragraph 32 of the Framework advises that plans and decisions should take account of whether the opportunities for sustainable transport modes have been taken up and whether safe and suitable access to the site can be achieved for all people. Hence, the provision of a clearly identified and safe pedestrian route from Prescott Road to the site is necessary to provide for a satisfactory form of development. It may be unusual to introduce a traffic priority system where there is sufficient width for two vehicles to pass; however, there is ample justification for such an approach in this case given the benefits to be derived in terms pedestrian safety and that those measures would effectively be formalising the informal 'give and take' system that currently operates on the narrowest sections of the Lane.
23. The proposals set out in Figure 2 provide the basis for the provision of a safe pedestrian route but give rise to a number of concerns in respect of the detail. Working from east to west these concerns are:
 - i) Having observed vehicles entering from Prescott Road I consider that the introduction of waiting restrictions on the adopted section of Powderworks Lane would be required in order to provide for the safe operation of the waiting area at the start of the priority section. Whilst such restrictions could be brought into effect by means of a Traffic Regulation Order the current level of on street parking at this point suggests a clear need for full

consultation with those that might be affected by such an order before any judgement could be made as to the deliverability of these restrictions.

- ii) The achievement of a 1.8m wide footway alongside the proposed priority section of the Lane would be dependent upon the removal of the bollards which the owners of The Alamo have installed to protect their boundary wall. The appellant has carried out legal searches in an attempt to establish land ownerships along the length of Powderworks Lane although no details of those searches have been provided. However, the Council's evidence that that owner of The Alamo believes that he owns the paved strip of land outside the wall does raise some doubt as to the deliverability of that part of the scheme. As there would appear to be no alternative means by which this section of the pedestrian route could be provided the appellant's ability to deliver this element of the route would need to be confirmed before planning permission is granted.
- iii) The need for the pedestrian route to cross the vehicular access to what I shall refer to as the shed manufacturing site on the north side of the Lane is of concern as there would be very limited intervisibility between drivers of vehicles leaving the site and pedestrians approaching from either side of the access; the considerable width of the access would also make this a somewhat intimidating part of the route to use particularly for children or those with young children. The Safety Audit identifies specific risks associated with that access which would have been addressed to some degree by the changes proposed in Figure 2A although those proposed changes appear not fully to have dealt with the concerns over intervisibility and the width of the access. The fact that the access gates open outwards is also of concern resulting in additional risk to pedestrians using the route. The appellant suggested at the site visit that the owner might be persuaded to amend this arrangement but I have no evidence that such an agreement could be achieved.
- iv) The operation of the waiting zone at the western end of the proposed priority section would, in my view, be significantly compromised by the parking that takes place outside of the shed display and sales yard on the south side of the Lane. From my observations on the site visit it would be very difficult for vehicles exiting from the priority section to pass both a large vehicle waiting to enter that section and a line of cars and vans parked in front of that site. A large vehicle waiting in that position would also make it difficult for drivers to reverse out of those parking spaces. The conflict of these movements with vehicles exiting the priority system to carry on along the Lane to the west would add to the risks to the safety of drivers and other road users. As the Council would not be able to enforce parking restrictions in this location these risks could be significantly reduced only if an agreement was reached with that business and, if necessary, with the land owner to relocate some or all of that existing parking within the site. I have no evidence to suggest that such an agreement could be secured and, as such a solution would presumably reduce the area of land available for the display and sale of sheds and other products, it cannot be assumed that the operator of that business would agree to such a change.
- v) I agree with the Council that the number of movements that would take place in the vicinity of the egress from the estate road would cause confusion to drivers and a risk of collisions between vehicles and that the surfacing and road markings proposed in Figure 2 would not satisfactorily

mitigate that risk. I accept that many of these movements already take place and that drivers of vehicles leaving the pallet yard, or that section of Powderworks Lane that gives access to the residential properties to the west, can be expected to exercise due care when making these movements. However, the formalisation of the priority system and introduction of a waiting zone and pedestrian route in this area would increase the need for care and for clear signage and road markings to direct drivers; the proposals shown on Figure 2 would not achieve that level of clarity.

- vi) Although a shared access along the narrow section of the estate road may be acceptable I consider that the provision of a marked footway at grade would improve safety in this section. I accept that this element of the revisions shown in Figure 2A would be unlikely to affect the interests of any other party but, for the reasons already given, I am unable to take that proposed change into account.
24. In addition to these detailed matters I also have concerns as to the appellant's ability to deliver the proposed improvements along Powderworks Lane. My reading of Part XI of the Highways Act 1980 supports the Council's view that the powers under the Private Street Works Code are available only to public authorities. The appellant may be able to use powers available under the Private Street Works Act but I understand that this would require the formal service of appropriate notices on all the frontagers and other parties with properties accessed by Powderworks Lane. Given the number of parties likely to be affected I anticipate that the service of such notices may result in a projected period of discussions and negotiations and, potentially, in disputes with some of those parties on legal points. It would not be appropriate to allow the redevelopment of the site to progress without certainty that the necessary works to Powderworks Lane can be completed and, on the evidence before me, that prospect is far from certain.
25. I have given thought to whether, if I was minded to allow the appeal, a Grampian type condition could be imposed that would require that the necessary works to Powderworks Lane be completed before any development on the appeal site is commenced. However, having regard to the advice in the Planning Practice Guidance with regard to the use such conditions, I do not consider that this would be appropriate in the current circumstances. The limited evidence as to the appellant's legal right to undertake the works, the evidence of a potential private ownership claim to a key area of land, the risks of frustration or delay that might arise due to the number of parties involved and/or affected by the proposed works, and the need to negotiate changes in the way that one or more businesses operate their sites all combine to suggest that there is no realistic prospect that the works could be completed within the life of the planning permission.
26. For these reasons I conclude that the proposal would not provide safe and suitable access for all and would conflict with paragraph 32 of the Framework in this regard. It would conflict with saved UDP Policy AD2, which requires that all development should provide for a realistic choice of means of travel including by means of the provision of safe cycle and walking facilities within the site and the improvement of routes that serve the site, and DQ1, which sets out a number of requirements for new development including that there should be safe and easy movement into and out of the site for everyone

including those with limited mobility. The proposal would also give rise to conflict with emerging Local Plan Policies EQ2, which repeats the requirement that development should provide safe and easy movement into and out of the site for everyone, and EQ3 which states that development should be located and designed to encourage walking and cycling to and from the site and should ensure the safety of pedestrians, cyclists and all road users is not adversely affected.

27. As agreed by the parties the appeal site does not score highly in terms of its accessibility by public transport and is likely to generate more car borne journeys than a comparable development in a more accessible location.

Other Considerations

28. At the present time the Council is unable to demonstrate a 5 year Housing Land Supply (HLS) and the relevant development plan policies for the supply of housing should not be considered up to date. Accordingly the fourth bullet of paragraph 14 of the Framework is engaged; this states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or specific policies in the Framework indicate that development should be restricted.
29. It was agreed at the hearing that the development plan policies cited in the first reason for refusal are not relevant policies for the supply of housing. The appellant contends that Policy GBC2 should be treated as a 'relevant policy' having regard to Court of Appeal judgment in the Suffolk Coastal District and Richborough Estates appeals³ that there is no logical basis to distinguish between restrictive policies of a general nature and those with a more specific purpose when determining whether a policy is a relevant policy for the supply of housing. In light of that judgment Policy GBC2 could be considered to be a relevant policy; however, I have already found it to be inconsistent with the Framework and that greater weight should be given to the Green Belt policies in the Framework. Footnote 9 to paragraph 14 confirms that the specific policies referred to in the fourth bullet of that paragraph include those Green Belt policies and it is necessary to consider whether those policies indicate that development should be restricted in this case.
30. I accept that a 2.9 year HLS represents a significant shortfall against the 5 year requirement but the advanced stage of preparation of the new Local Plan and the expectation of its adoption early in 2017 means that there is a strong prospect that the lack of a 5 year HLS will shortly be resolved. In those circumstances, and in the absence of any affordable housing element within the appeal proposal, the contribution that the proposed 11 dwellings would make in meeting the need for new housing in Sefton is a material consideration of only medium weight. The proposal would provide economic benefits in terms of construction expenditure and employment, New Homes Bonus, the household expenditure generated by the occupiers of the proposed homes and would provide social benefits in terms of the provision of new good quality homes. However, these benefits would need to be balanced against the economic role which the site is fulfilling in its current use.

³ Suffolk Coastal District Council & Hopkin Homes Ltd & SSCLG and Richborough Estates Partnership LLP & Cheshire East Borough Council & SSCLG [2015] EWHC 410 (Admin)

31. Although of large scale, the existing buildings on the site appear well maintained and to be in good order and I do not consider these to be an eyesore as the appellant suggests. I accept that the removal of the partially dismantled vehicles and other materials stored in the yard area and the generally tidying up of this land would bring about significant benefits in terms of its visual amenity. Considerable improvements in the appearance of the site could however be achieved through site management measures and other means and would not be dependent upon its redevelopment. Whilst the proposal would retain the meadow area and pond as grassland and shrubs the evidence from the third party representations is that this land is already maintained and managed and that the main threat to its preservation as a visual and environmental asset has come from the encroachment of vehicle and other storage use beyond the area of hard standing within the site.
32. A decrease in the number of vehicles using Powderworks Lane and the expected change in the mix of that traffic may benefit some existing users of the road by reducing the level of conflict between cars and commercial vehicles. However, the proposed improvements to provide a defined pedestrian route and associated traffic calming works would be required to render the proposal acceptable in planning terms and should not be regarded as a benefit of the scheme.
33. In summary, although the proposal would deliver some economic and social benefits I do not consider that these would amount to considerations that would clearly outweigh the harm that would be caused to the Green Belt and by reason of the failure to provide safe access for all and, hence, to provide a realistic choice of means of travel. Accordingly, the very special circumstances needed to justify the granting of planning permission for inappropriate development in the Green Belt have not been demonstrated and the proposal would conflict with Section 9 of the Framework and with saved UDP Policy GBC2 insofar as this seeks to protect the Green Belt from inappropriate development. It would also conflict with Policy MN7 of the emerging Local Plan which states a presumption against the construction of new buildings in the Green Belt and defers to the Framework policies in respect of what forms of development should be treated as exceptions to that presumption.
34. In light of these conclusions I find that the Framework's Green Belt policies do indicate that the development should be restricted. I also find, having regard to the degree of conflict with the Framework's policies concerning the Green Belt and the promotion of sustainable transport, that the adverse impacts of granting permission would clearly and demonstrably outweigh the benefits of the proposal when assessed against the Framework's policies as a whole. I therefore conclude that the paragraph 14 presumption in favour of granting planning permission does not apply in this case.

Other Matters

35. I am satisfied that there is no evidence to suggest that the tree which would be felled to facilitate improvements to the site access (Tree 22) is being used for roosting and, hence, no risk of a loss of habitat. There would therefore be no conflict with saved UDP Policies NC2 and NC3 which seek that development should not harm protected species and their habitats.
36. Although some third parties have raised concerns about flood risk I note that the small part of the site within Flood Zone 3 is not within the area proposed

for built development and that there is no objection from the Environment Agency. Concerns have been raised about contamination because of the former use of the site as a gunpowder factory. However, I have no information to suggest the land would not be suitable for residential use and the carrying out of a site investigation and any necessary remediation works that might be needed could be secured by means of a planning condition. Similarly, I have no evidence to support the assertions made by some of the third parties that mains services in the area are inadequate to support the proposed development. The occupier of a neighbouring property is concerned about a loss of privacy but I consider that this would be unlikely given the extensive vegetation to the site boundary and the likely separation distances between existing dwellings and the proposed new houses.

37. The signed Unilateral Undertaking (UU) submitted by the appellant provides for contributions to the cost of Green Space Enhancement. Emerging Local Plan Policy EQ9 seeks a minimum size of 0.6 hectare for any public open space within a new development and that it should include an equipped play area but does not prescribe how the remainder of the open space should be landscaped and used. Given the outline form of the proposal there is insufficient evidence that these requirements could not be met either on the appeal site itself or by using part of the meadow area which is in the appellant's ownership and which is proposed for retention in any event. I am therefore unable to conclude that the obligations set out in the UU are necessary to make the proposal acceptable in planning terms, as required by paragraph 215 of the Framework, and have not given them any weight in my determination of the appeal.

Conclusions

38. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Paul Singleton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Gee Director Roman Summer

Alan Davies Director DTPC

FOR THE COUNCIL:

Steve Faulkner Development Management Team Leader

Ian Loughlin Senior Planner - Local Policy

Brian Mason Highway Development and Design Manager

Richborough Estates